

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 17, 2008

**LORENZO HERRON v. CHERRY LINDAMOOD, WARDEN and STATE
OF TENNESSEE**

**Appeal from the Circuit Court for Wayne County
No. 14346 Jim T. Hamilton, Judge**

No. M2008-00543-CCA-R3-HC - Filed April 15, 2009

Petitioner, Lorenzo Herron, was convicted of murder and sentenced to life in prison. Petitioner unsuccessfully sought relief on direct appeal and via a post-conviction petition. *See State v. Lorenzo Herron*, No. 72, 1991 WL 99541 (Tenn. Crim. App., at Jackson, Jun. 12, 1991), *perm. app. denied*, (Tenn., Jan. 27, 1992); *Lorenzo Herron v. State*, No. 02-C-9605-CR- 00141 (Tenn. Crim. App., at Jackson, July 28, 1997), *perm. app. denied*, (Tenn., Apr. 20, 1998). Petitioner subsequently sought habeas corpus relief on the basis that the indictment was fatally defective. The dismissal of his petition for habeas corpus relief was affirmed by this Court on appeal. *Lorenzo Herron v. State*, No. M2007-00696-CCA-R3-HC, 2007 WL 4232792 (Tenn. Crim. App., at Nashville, Dec. 3, 2007). Petitioner now seeks habeas corpus relief on the basis that the trial court lacked subject matter jurisdiction because the affidavit of complaint in the warrant for Petitioner's arrest is "void on its face." After the trial court summarily dismissed the petition, Petitioner filed a timely notice of appeal. Because we determine that the petition does not comply with the procedural requirements for habeas corpus relief and the petition fails to state a cognizable claim, we affirm the dismissal of the habeas corpus petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which ALAN E. GLENN and D. KELLY THOMAS, JR., JJ., joined.

Lorenzo Herron, Pro Se, Henning, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; and Mike Bottoms, District Attorney General, for the appellee, State of Tennessee.

OPINION

On March 31, 1989, Petitioner and the victim drove to Memphis, Tennessee from Fort Bragg, North Carolina, where Petitioner was stationed as a member of the United States Army. *Lorenzo Herron*, 1991 WL 99541, at *1. In the early morning hours of April 1, when the pair arrived in Memphis, Petitioner shot the victim twice. *Id.* The victim's body was found the same day by a fisherman. *Id.*

The Shelby County Grand Jury indicted Petitioner in July of 1989 for one count of first degree murder. Petitioner was convicted of first degree murder and sentenced to life in prison. In 1991, Petitioner unsuccessfully appealed his conviction to this Court. *See id.* Petitioner subsequently filed a petition for post-conviction relief. *Lorenzo Herron*, 1997 WL 421009, at *1. The post-conviction court dismissed the petition. *Id.* This Court affirmed the post-conviction court's dismissal of the petition. *Id.*

Petitioner filed a petition for writ of habeas corpus relief on November 21, 2006 in which he alleged that the indictment was insufficient. The habeas corpus court summarily dismissed the petition. Petitioner unsuccessfully appealed the dismissal of that petition to this Court. He was unsuccessful in that appeal. *Lorenzo Herron*, 2007 WL 4232792, at *1. This Court determined that "the indictment was constitutionally sufficient to inform Petitioner of the crime with which he was indicted and vest jurisdiction in the trial court." *Id.*

Subsequently, on October 17, 2007, Petitioner filed a second petition for habeas corpus relief. In this petition, he alleged that the trial court lacked subject matter jurisdiction and the affidavit of complaint was "void on its face." The habeas corpus court summarily dismissed the petition without a hearing. Petitioner now appeals the dismissal.

Analysis

On appeal, Petitioner complains that the affidavit of complaint was based on "false facts" and was used as a tool to obtain a "false confession." He also complains that the trial court lacked subject matter jurisdiction because the affidavit of complaint was not "official" in that it was not "sworn before a magistrate." The State argues that Petitioner has failed to present a proper claim for habeas corpus relief and has failed to show that the judgment is void or that his sentence has expired.

The determination of whether to grant habeas corpus relief is a question of law. *See Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. *Id.* Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus

is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. See *Taylor*, 995 S.W.2d at 83. “A void judgment ‘is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.’ We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal.” *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner’s filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109; *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280, 283 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Summers v. State*, 212 S.W.3d 251, 260 (Tenn. 2007); *Hickman*, 153 S.W.3d at 19-20; *Archer*, 851 S.W.2d at 165. For the benefit of individuals such as Petitioner, our legislature has explicitly laid out the formal requirements for a petition for a writ of habeas corpus at Tennessee Code Annotated section 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner’s behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

A habeas corpus court “properly may choose to summarily dismiss a petition for failing to comply with the statutory procedural requirements.” *Summers*, 212 S.W.3d at 260; *See also Hickman*, 153 S.W.3d at 21. Further, in *Summers*, our supreme court explained:

In the case of an illegal sentence claim based on facts not apparent from the face of the judgment, an adequate record for summary review must include pertinent documents to support those factual assertions. When such documents from the record of the underlying proceedings are not attached to the habeas corpus petition, a trial court may properly choose to dismiss the petition without the appointment of counsel and without a hearing.

212 S.W.3d at 261.

In the case herein, although the order dismissing the habeas corpus petition does not specify the reasons, it appears the habeas corpus court summarily dismissed the petition for habeas corpus relief without a hearing. Reviewing the record herein, we note Petitioner failed to attach a copy of his previous petition for habeas corpus relief and failed to give a satisfactory reason as to why he has not provided a copy of the first petition for habeas corpus relief. This reason alone is a sufficient basis for this Court to affirm the dismissal of the petition. *See* T.C.A. § 29-21-107(b)(4).

Further, Petitioner has not presented an issue that is appropriate for habeas corpus relief. Petitioner has not alleged that he is being restrained as a result of a void judgment or an expired sentence. He merely argues that the affidavit of complaint was illegal and that it was used by authorities to obtain his confession. Petitioner is not entitled to relief. The face of the judgment reflects that the trial court had jurisdiction of the matter and Petitioner’s sentence has certainly not expired. Finally, Petitioner seems to include a challenge to the sufficiency of the evidence. This is not a proper issue for habeas corpus relief. *See Gant v. State*, 507 S.W.2d 133, 135 (Tenn. Crim. App. 1973); *see also Hubert Johnson v. State*, No. M2006-01639-CCA-R3-HC, 2007 WL 1582663, at *2 (Tenn. Crim. App., at Nashville, June 1, 2007). Moreover, this Court determined on direct appeal that the evidence was sufficient to support the conviction. *State v. Lorenzo Herron*, 1991 WL 99541, at *1. Petitioner is not entitled to relief.

Conclusion

For the foregoing reasons, the judgment of the habeas corpus court is affirmed.

JERRY L. SMITH, JUDGE